



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2004

Ms. Maureen E. Ray
Special Assist Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

OR2004-4613

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202974.

The State Bar of Texas (the "Bar") received a request for all documents pertaining to the professional file of a specific individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state that certain records relating to a grievance that was dismissed have been destroyed in accordance with rule 2.12 of the Texas Rules of Disciplinary Procedure. We note that chapter 552 of the Government Code does not require the Bar to release information that did not exist when it received this request or to create responsive information.¹ We have considered your arguments and have reviewed the sample of information you submitted.²

We first address the submitted database page which indicates a possible grievance history. You contend that the requested information is not subject to the Public Information Act (the

¹See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

“Act”), pursuant to section 81.033(a) of the Government Code. Section 81.033(a) provides that:

[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552.

Gov’t Code § 81.033(a). The submitted database page pertains to a grievance filed against an attorney and is confidential under rule 2.16A of the Texas Rules of Disciplinary Procedure.³ Thus, you argue that pursuant to section 81.033(a) of the Government Code, the information at issue is not subject to disclosure under the Act.⁴ You inform us that this information relates to an investigation of a grievance against an attorney that resulted in a dismissal. Based on your arguments and our review of the information at issue, we agree that the submitted information is confidential under rule 2.16A. We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the submitted database page is not subject to the Act. *See* Gov’t Code § 81.033(a).

We next address your claim that the submitted records of the Committee on Minimum Continuing Legal Education (“MCLE”) are excepted from disclosure under section 552.101 of the Government Code. In Open Records Letter No. 2004-3132 (2004), this office issued a previous determination ruling allowing the Bar to withhold MCLE records as they relate to compliance or non-compliance by Bar members. We conclude that the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met.⁵ Therefore, you may rely on Open Records Letter No. 2004-3132 as a previous determination.

³Disciplinary proceedings are strictly confidential and not subject to disclosure, except by court order or as otherwise provided in this Rule 2.16. TEX. R. DISCIPLINARY P. 2.16, *reprinted in* TEX. GOV’T CODE ANN. tit. 2, subtit. G, App. A-1. “Disciplinary Proceedings” include the processing of a grievance. *See* TEX. R. DISCIPLINARY P. 1.06L.

⁴We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex. App.—Houston [1st Dist.] 1982, writ ref’d n.r.e.).

⁵The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the “Act”); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. David Floyd', with a stylized flourish at the end.

W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 202974

Enc. Submitted documents

c: Mr. Robert D. Thomas
Thomas Hudson & Brustkern
3305 Northland Drive, Suite 301
Austin, Texas 78731
(w/o enclosures)